IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FARAD CONTINUATION SHEET.
SECOND APPEAL NO.1428 OF 2004

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Office Notes,Office memorandum of Coram, appearances,Court's orders or directions & Registrar's orders.	Court's or Judge's orders

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Mr.R.V.Govilkar for the Appellant

CORAM: A.S.OKA,J.
DATE : MARCH 3,2005.

P.C.:

1. The Second Appeal is by the original Defendant No.1. The Appellate Court has held that the Appellant-Defendant No.1 has purported to purchase the property from a co-parcener who was holding an undivided share in the joint family property. There is no evidence of partition. Therefore, the vendor of the Appellant No.1 before partition was effected could not claim any specific portion of the suit property as his own. The Appellate Court held that the alienation is valid only to the extent of undivided share held by the vendor of the Appellant-Defendant No.1.

2. A case tried to be made out by the learned Counsel for the Appellant on the basis of admission given by the Plaintiff

that there was a partition cannot be accepted as at highest, the admission relates to the house property and on the basis of the said admission it cannot be inferred that there was a partition by metes and bounds of the lands held by the joint family. In view of settled position of law, the Appellate Court has passed a decree in favour of the Respondent.

3. No substantial question of law arises. Second Appeal is dismissed with no order as to costs.

4. At this stage, on the request made by the learned Counsel for the Appellant, time fixed by the Appellate Court for filing a suit for partition is extended till 30th June 2005.

JUDGE.